

**REZONING/SUP/CHANGE IN CONDITIONS
APPLICATION**

APPLICANT INFORMATION	OWNER INFORMATION
NAME: <u>Ashton Atlanta Residential, LLC</u>	NAME: <u>The David E Chymiak Trust</u>
ADDRESS: <u>3820 Mansell Road, Suite 300</u>	ADDRESS: <u>21553 E Apache</u>
CITY: <u>Alpharetta</u>	CITY: <u>Catoosa</u>
STATE: <u>GA</u> ZIP: <u>30022</u>	STATE: <u>OK</u> ZIP: <u>74015</u>
PHONE: _____	PHONE: _____

CONTACT PERSON: J Ethan Underwood PHONE: 770-781-4100

CONTACT'S E-MAIL: eunderwood@mhtlegal.com

APPLICANT IS THE:

OWNER'S AGENT PROPERTY OWNER CONTRACT PURCHASER

PRESENT ZONING DISTRICT(S): M-1A REQUESTED ZONING DISTRICT: TR

LAND DISTRICT(S): 11 LAND LOT(S): 397 & 398 ACREAGE: 4.42

ADDRESS OF PROPERTY: 11350 Technology Circle

PROPOSED DEVELOPMENT: Single Family Attached Townhomes

CONCURRENT VARIANCES: _____

RESIDENTIAL DEVELOPMENT	NON-RESIDENTIAL DEVELOPMENT
No. of Lots/Dwelling Units <u>50</u>	No. of Buildings/Lots: _____
Dwelling Unit Size (Sq. Ft.): <u>1,792 minimum</u>	Total Building Sq. Ft. _____
Density: <u>11.31 units/acre</u>	Density: _____

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APPLICANT'S CERTIFICATION

THE UNDERSIGNED BELOW STATES UNDER OATH THAT THEY ARE AUTHORIZED TO MAKE THIS APPLICATION. THE UNDERSIGNED IS AWARE THAT NO APPLICATION OR REAPPLICATION AFFECTING THE SAME LAND SHALL BE ACTED UPON WITHIN 12 MONTHS FROM THE DATE OF LAST ACTION BY THE CITY COUNCIL.

Joe Ingram
Signature of Applicant

10.26.2016
Date

Joe Ingram, Land Acquisition Manager, Ashton Atlanta Residential, LLC
Type or Print Name and Title



Teresa Drolet 10/26/16
Signature of Notary Public Date

Notary Seal

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PROPERTY OWNER'S CERTIFICATION

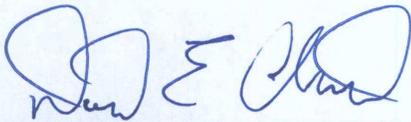
I do solemnly swear and attest, subject to criminal penalties for false swearing, that I am the legal owner, as reflected in the records of Fulton County, Georgia, of the property identified below, which is the subject of the attached Land Use Petition before the City of Johns Creek, Georgia. As the legal owner of record of the subject property, I hereby authorize the individual named below to act as the applicant in the pursuit of the Application for Rezoning, Use Permit, & Concurrent Variance in request of the items indicated below.

I, David E. Chymiak, authorize, Ashton Atlanta Residential, LLC,
(Property Owner) (Applicant)

to file for TR, at 11350 Technology Circle
(RZ, SUP, CV) (Address)

on this date October 26, 2016
(Month) (Day)

- I understand that no application or reapplication affecting the same land shall be acted upon within 12 months from the date of last action by the City Council.
- I understand that failure to supply all required information (per the relevant Applicant Checklists and requirements of the Johns Creek Zoning Ordinance) will result in REJECTION OF THE APPLICATION.
- I understand that preliminary approval of my design plan does not authorize final approval of my zoning or signage request. I agree to arrange sign permitting separately, after approval is obtained.
- I understand that representation associated with this application on behalf of the property owner, project coordinator, potential property owner, agent or such other representative shall be binding.



Signature of Property Owner

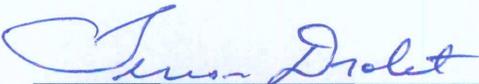
10/26/2016
Date

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David E. Chymiak, as Trustee of the David E. Chymiak Trust

Type or Print Name and Title



Signature of Notary Public

10/26/16
Date

Notary Seal

ZONING IMPACT ANALYSIS FORM

Analyze the impact of the proposed rezoning and provide a written point-by-point response to the following questions:

1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?
See Zoning Impact Analysis Form, attached.

2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?
See Zoning Impact Analysis Form, attached.

3. Does the property to be rezoned have a reasonable economic use as currently zoned?
See Zoning Impact Analysis Form, attached.

4. Will the zoning proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
See Zoning Impact Analysis Form, attached.

5. Is the zoning proposal in conformity with the policies and intent of the land use plan?
See Zoning Impact Analysis Form, attached.

6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal?
See Zoning Impact Analysis Form, attached.

7. Does the zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek?
See Zoning Impact Analysis Form, attached.

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ZONING IMPACT ANALYSIS FORM

Analyze the impact of the proposed rezoning and provide a written point-by-point response to the following questions:

1. Does the zoning proposal permit a use that is suitable in view of the use and development of adjacent and nearby property?
The use of the subject property as a single-family, attached residential development, will be compatible with surrounding properties, most of which are residential in use.
2. Does the zoning proposal adversely affect the existing use or usability of adjacent or nearby property?
The proposed use will not negatively affect the use or value of surrounding properties. Proposed home values will sustain or bolster nearby residential uses and will provide high-quality residences for employees of Technology Park and surrounding areas.
3. Does the property to be rezoned have a reasonable economic use as currently zoned?
The subject property is zoned to facilitate an office building however, the subject property has not been developed for such use, despite the development of all properties surrounding it. The property has limited road frontage and no visibility from Medlock Bridge Road and is best suited for residential development; no office or commercial use will develop this far from a major thoroughfare.
4. Will the zoning proposal result in a use that could cause an excessive or burdensome use of existing streets, transportation facilities, utilities or schools?
The Current Zoning allows for moderately intense commercial/office use (which would cause significant traffic from workers and customers). The Applicant's proposal and the traffic generated from it will be of similar impact as that allowed by the current zoning. The projected impact on existing streets, schools transportation facilities and utilities will be in keeping with projected growth. Assuming each of the 50 proposed homes will facilitate 0.75 students per household persons per residence, the proposed development is anticipated to generate a total 38 new students, which would be phased in over an anticipated 3-year period.
5. Is the zoning proposal in conformity with the policies and intent of the land use plan?
The Subject Property is located within the Technology Park Character Area, which has been determined as the City's "predominant economic engine and the landmark for high design standards," containing a mixture of residential, commercial, and uses. Comp. Plan., p. 12. The proposed townhome community facilitates the goals of the Comprehensive Plan in that it will provide high-quality residences for employees of the Technology Park and surrounding areas. This development will help to alleviate traffic by providing an additional housing option nearby businesses.

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6. Are there existing or changing conditions that affect the use and development of the property which support either approval or denial of the zoning proposal?

The surrounding area has been developed for residential use, and the Subject Property is located far from a major thoroughfare and there are significant amounts of vacant offices in the area; as such, no office or commercial use will develop at this location.

7. Does the zoning proposal permit a use that can be considered environmentally adverse to the natural resources, environment and citizens of the City of Johns Creek?

The proposed use will not be environmentally adverse to the natural resources, environment, or citizens of Johns Creek.

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DISCLOSURE REPORT FORM

WITHIN THE (2) YEARS IMMEDIATELY PRECEDING THE FILING OF THIS ZONING PETITION HAVE YOU, AS THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, OR AN ATTORNEY OR AGENT OF THE APPLICANT OR OPPONENT FOR THE REZONING PETITION, MADE ANY CAMPAIGN CONTRIBUTIONS AGGREGATING \$250.00 OR MORE OR MADE GIFTS HAVING AN AGGREGATE VALUE OF \$250.00 TO THE MAYOR OR ANY MEMBER OF THE CITY COUNCIL.

CIRCLE ONE: YES (if YES, complete points 1 through 4); **NO** (if NO, complete only point 4)

1. CIRCLE ONE: **Party to Petition** (If party to petition, complete sections 2, 3 and 4 below)
In Opposition to Petition (If in opposition, proceed to sections 3 and 4 below)

2. List all individuals or business entities which have an ownership interest in the property which is the subject of this rezoning petition:

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

3. CAMPAIGN CONTRIBUTIONS:

Name of Government Official	Total Dollar Amount	Date of Contribution	Enumeration and Description of Gift Valued at \$250.00 or more

4. The undersigned acknowledges that this disclosure is made in accordance with the Official Code of Georgia, Section 36-67A-1 et. seq. Conflict of interest in zoning actions, and that the information set forth herein is true to the undersigned's best knowledge, information and belief.

Name (print) JOE ALYGRAM
Signature: [Signature] Date: 10-26-2016

PUBLIC PARTICIPATION PLAN

1. The City of Johns Creek will notify all property owners within a quarter mile of the site. What other groups do you intend to contact?

The Applicant will contact owners of properties located within 1/4 mile of the subject property, Homeowners associations for subdivisions within 1/4 mile of the subject property, City Officials including members of the Planning Commission and City Council, all affected government departments. If the City maintains a list of interested parties said individuals will also be notified.

2. How do plan to contact any interested parties, either before making application or after the city neighborhood meeting, regarding the rezoning/use permit application?

The Applicant will notify the individuals listed in 1. above by directly mailing letters and holding meetings. The Applicant will hold all required public participation meetings and is willing to hold meetings with individual stake holders and City officials. Furthermore, the Applicant will utilize e-mail and phone calls to correspond with any interested stake holders.

3. In addition to the City of Johns Creek neighborhood meeting, do you plan to provide any other opportunities for discussion with interested parties before the PC and M&CC hearings?

The Applicant may hold a public participation meeting of their own to discuss the project before the PC and M & CC hearings.

4. What is your schedule for completing the Public Participation Plan?

The Applicant will complete the Public Participation Plan within 15 days prior to the Planning Commission hearing.

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LAND USE PETITION APPLICANT'S ACKNOWLEDGEMENT FORM

R2-16-006
Case Number 16-2611

The applicant's attendance is required during the following public hearings:

Neighborhood Meeting Date: December 8, 2016

Planning Commission Date: January 3, 2017

Mayor & Council Date: January 23, 2017

Samantha Fraser Speaks 11/1/16
Applicant's Printed Name and Signature Date

Community Development

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Eman Underwood
eunderwood@mhtlegal.com
City of Johns Creek
Planning & Zoning

RESERVATION OF CONSTITUTIONAL RIGHTS REGARDING ZONING APPLICATION

Re: Applicant: Ashton Atlanta Residential, LLC
Subject Property: 4.42 Acres Designated as Fulton County Tax Parcel(s): 11-107003970142
Current Zoning: M-1A
Proposed Zoning: TR
Proposed Use: 50 Single Family Attached Townhomes
ROW Access: Technology Circle

This statement is intended to reserve all constitutional and statutory protections available to the Applicant. The Applicant has filed a timely application, has provided all required information and has submitted the appropriate application fees. The application meets all judicial and statutory requirements for approval.

The portions of the Ordinances of Johns Creek that classify, or may classify, the Subject Property into any non-requested zoning classification or zoning classification that does not permit the proposed use as a matter of right, or at a density less than as requested by the Applicant, are, or will be, unconstitutional in that they will constitute a taking of the Applicant's and owners' property rights without first paying fair, adequate, and just compensation for such rights in violation of Art. I, Sec. III, Para. I of the Constitution of the State of Georgia and the Fifth and Fourteenth Amendments to the Constitution of the United States.

The Subject Property is presently suitable for development under the Applicant's Proposal, as requested by the Applicant, and it is not suitable for development under any other zoning classification, or at a density or use less than that requested by the Applicant. A denial of this Applicant's Proposal, as requested by the Applicant, will constitute an arbitrary and capricious act by the City of Johns Creek without any basis for such, and will constitute an abuse of discretion in violation of Art. I, Sec. I, Para. I of the Constitution of the State of Georgia and the Due Process Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States.

A refusal by the City of Johns Creek to approve the Applicant's Proposal, as requested by the Applicant, will prohibit the only viable economic use of the property, will be unconstitutional, and will discriminate in an arbitrary, capricious, and unreasonable manner between the Applicant and owners, and the owners of similarly situated property, in violation of Art. I, Sec. I, Para. II of the Constitution of the State of Georgia and the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

The Applicant submits that the City cannot lawfully impose more restrictive standards on the development of the Subject Property than presently exist. To do so not only will constitute a taking of

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November 1, 2016

the property as set forth above, but will also amount to an unlawful delegation of the Board's authority in response to neighborhood opposition, in violation of Art. IX, Sec. II, Para. IV of the Constitution of the State of Georgia.

Approval by the City of any zoning conditions that are not imposed pursuant to the City's police power for the protection or benefit of neighbors to reasonably ameliorate the effects of the underlying zoning change would be unconstitutional and invalid.

The Applicant further asserts that the Ordinances of Johns Creek were not adopted in compliance with the laws or constitutions of Georgia or of the United States, are unconstitutionally vague and a refusal to approve the Application based upon provisions illegally adopted would deprive the Applicant of due process of law.

Any zoning conditions or other restrictions imposed on the Subject Property without the consent of the Applicant and property owners that do not serve to ameliorate the negative impacts of the development as such are defined under Georgia law are invalid and void. The Applicant and owners reserve the right to challenge any such zoning conditions and other restrictions. The Applicant and owners also reserve the right to challenge any unlawful exactions, whether they are in the form of illegal impact fees or otherwise.

Furthermore, this Reservation also constitutes an Ante Litem Notice pursuant to O.C.G.A. § 36-11-1, which places the City of Johns Creek and all other agents of the City on notice of the Applicant's and owners' intent to seek monetary damages and attorney's fees against the City of Johns Creek for any rezoning action, zoning condition, illegal impact fee and any other unlawful restrictions and exactions that are imposed on the Subject Property, the Applicant and the owners.

By filing this Reservation of Constitutional Rights, the Applicant reserves all rights and remedies available to it under the United States Constitution, the Georgia Constitution, all applicable federal, state, and local laws and ordinances, and in equity.

Accordingly, the Applicant and owners respectfully request that the Applicant's Proposal be granted, as requested by the Applicant. This Reservation of Constitutional Rights shall be included with the Application. The Applicant also reserves the right to amend this statement and the Application by supplementing further responses and documents.

Sincerely,



Ethan Underwood,
Attorney for the Applicant

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202 Tribble Gap Road | Suite 200 | Cumming, Georgia 30040
770-781-4100 | www.mhtlegal.com

November 1, 2016

City of Johns Creek
Department of Community Development
12000 Findley Road, Suite 400
Johns Creek, GA 30097

Re: Land Use Application of Ashton Atlanta Residential, LLC for Fulton County Tax Parcel: 11
107003970142

To Whom It May Concern:

Pursuant to Section 36-67A-3 of the Official Code of Georgia Annotated, adopted by the Georgia General Assembly, effective July 1, 1986, please be advised that no campaign contributions have been given by Miles Hansford & Tallant, LLC or me to any City of Johns Creek official.

This letter constitutes the disclosure of campaign contributions as set forth herein with respect to the above-referenced application and is incorporated as a part of the application.

Sincerely,

Ethan Underwood

Ethan Underwood
eunderwood@mhtlegal.com

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SURVEY LEGAL DESCRIPTION
TECHNOLOGY CIRCLE

All that tract or parcel of land lying and being located in Land Lots 397 and 398 of the 1st District, 1st Section, in the City of Johns Creek, Fulton County, Georgia, and being more particularly described as follows:

To find the **TRUE POINT OF BEGINNING** commence at the intersection of the southeasterly right-of-way of Johns Creek Parkway (Variable right-of-way) and the northeasterly right-of-way of Technology Circle (70' right-of-way); and running thence in a southeasterly direction along and the northeasterly right-of-way of Technology Circle and following the curvature thereof along a curve to the left for an arc length of 31.41 feet (said arc having a radius of 20.00 feet and being subtended by a chord of $S17^{\circ}46'01''E - 28.28$ feet) to a point; running thence $S62^{\circ}46'01''E$ and continuing along the northeasterly right-of-way of Technology Circle for a distance of 143.06 feet to a point; running thence in a southeasterly direction along the northeasterly right-of-way of Technology Circle and following the curvature thereof along a curve to the right for an arc length of 351.63 feet (said arc having a radius of 746.20 feet and being subtended by a chord of $S49^{\circ}16'01''E - 348.39$ feet to an iron pin (capped #4 rebar) which is the **TRUE POINT OF BEGINNING**; from the **TRUE POINT OF BEGINNING** as thus established, leaving said right-of-way and running $N17^{\circ}15'40''E$ for a distance of 535.79 feet to an iron pin (capped #4 rebar); thence running $S65^{\circ}47'56''E$ for a distance of 309.99 feet to an iron pin (#4 rebar); thence running $S70^{\circ}25'27''E$ for a distance of 8.91 feet to an iron pin (capped #4 rebar) located on the northwesterly edge of Lakefield Place (a Private Drive); thence running in a southwesterly direction along and following the northwesterly edge of Lakefield Place (a Private Drive) for the following courses and distances; $S24^{\circ}12'49''W - 59.00$ feet to an iron pin (capped #4 rebar), $S06^{\circ}20'29''E - 215.06$ feet to an iron pin (capped #4 rebar), $S27^{\circ}16'10''W - 77.11$ feet to an iron pin (capped #4 rebar), $S50^{\circ}33'40''W - 75.75$ feet to an iron pin (capped #4 rebar), $S83^{\circ}39'13''W - 30.58$ feet to an iron pin (capped #4 rebar), and $S49^{\circ}22'55''W$ along and following the northwesterly edge of Lakefield Place (a Private Drive) and Lakefield Place (a Public Road with a variable right-of-way) for a distance of

261.56 feet to an iron pin (#4 rebar) located at the intersection of the northwesterly right-of-way of said Lakefield Place (Variable right-of-way) and the northeasterly right-of-way of Technology Circle (70' right-of-way); thence running N35°45'04"W along the northwesterly right-of-way of Technology Circle for a distance of 217.22 feet to an iron pin (capped #4 rebar) which is the **TRUE POINT OF BEGINNING**. Said tract contains 4.4214 acres (192,596 sq. ft.).

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PRE-APPLICATION FORM

REZONING, USE PERMIT(S) AND CONCURRENT VARIANCE(S)

Purpose & Process

A Pre-Application Meeting provides you the opportunity to present a conceptual plan and letter of intent to a representative of the Community Development Department. This meeting benefits you, the applicant, by receiving general comments on the feasibility of the plan, the process(es)/procedure(s) and fees required to process and review the application(s). Please contact Allison Tarpley at 678-512-3200 to schedule an appointment. This form will be completed during the pre-application meeting. After completing the pre-application meeting, the applicant may file the Land Use Petition.

Applicant: Ashton Atlanta Residential

Site Address: Technology Circle Parcel Size: 4.42 Acres

Proposal Description: 50^{units} townhouse development
attached.

Existing Zoning Designation and Case Number: M-1A

Proposed Zoning Designation: TR

Comprehensive Land Use Map Designation: technology park

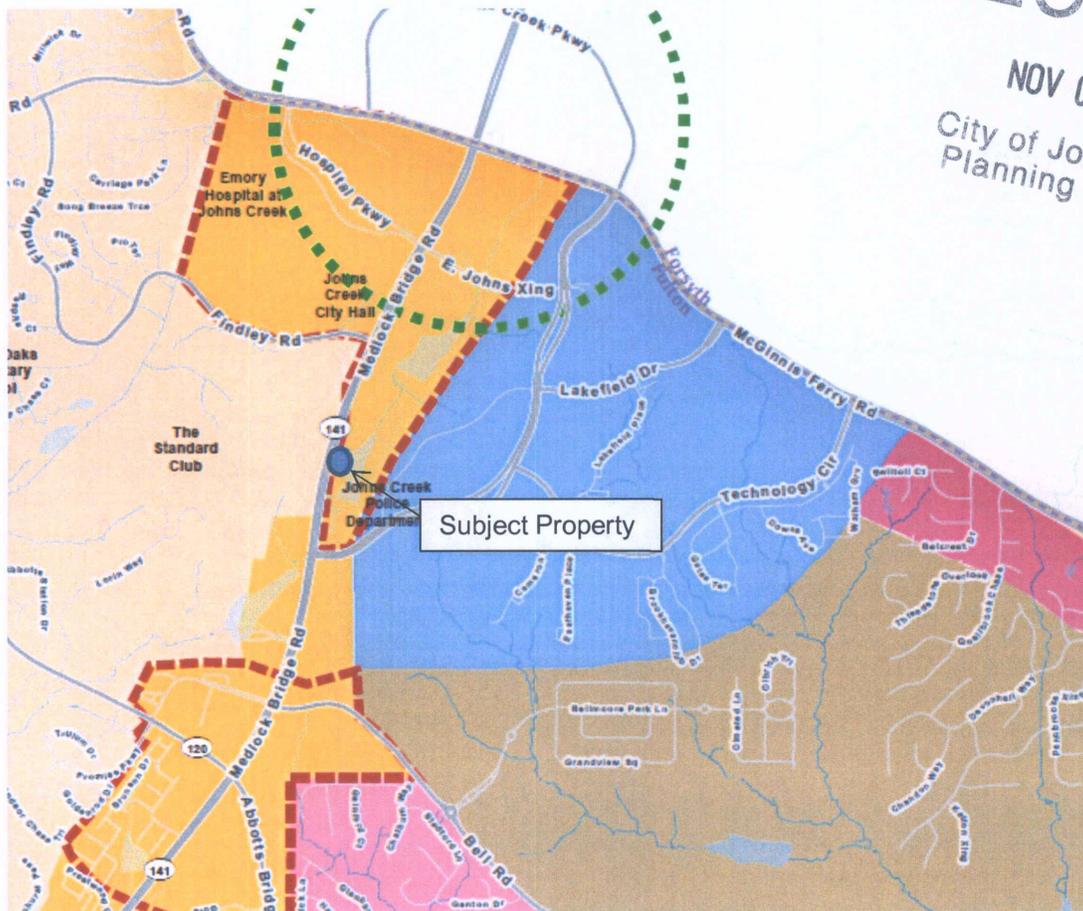
Planner: Kylie Adams Date: 10/31/16

Environmental Site Analysis

Ashton Atlanta Residential, LLC

1. Conformance with the Comprehensive Plan.

The Subject Property is located within the Technology Park Character Area, which has been determined as the City's "predominant economic engine and the landmark for high design standards," containing a mixture of residential, commercial, and uses. *Comp. Plan., p. 12*. The proposed townhome community facilitates the goals of the Comprehensive Plan in that it will provide high-quality residences for employees of the Technology Park and surrounding areas. This development will help to alleviate traffic by providing an additional housing option nearby businesses.



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2. Environmental Impacts of the Proposed Project.

The following environmental features are present and are affected by the proposed project, as below:

- a. **Wetlands** - There are no known wetlands on site. All development will be in accordance with applicable FEMA, EPA, GAEPD, and City regulations regarding wetlands.

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- b. **Floodplain** – There are no known floodplain on site. All development shall be in accordance with applicable FEMA, EPA, GAEPD, and City regulations regarding floodplain.
- c. **Streams/stream buffers** – There are no known streams/stream buffers on site. All stream buffers will be preserved according to applicable laws and ordinances.
- d. **Slopes exceeding 25 percent over a ten-foot rise in elevation** – There are no slopes exceeding 25 percent over a ten-foot rise in elevation on site.
- e. **Vegetation, including endangered species** - areas of confirmed state department of natural resources listed endangered species shall comply with the Federal Endangered Species Act; no endangered species are known to be on site.
- f. **Wildlife species, including fish and endangered species** - areas of confirmed state department of natural resources listed endangered species shall comply with the Federal Endangered Species Act; no endangered species are known to be on site.
- g. **Archeological/historical sites** – N/A; the subject property is not a historical site.

3. Project Implementation Measures.

The proposed project will implement each of the following measures, as applicable, as described below:

- a. **Protection of environmentally sensitive areas, i.e., floodplain, slopes exceeding 25 percent, river corridors** – The project will observe all applicable regulations regarding streams, steep slopes, and floodplain.
- b. **Protection of water quality** - The project will prevent pollution of streams through the implementation of an integrated storm water management plan that incorporates water quality treatment of runoff, downstream channel protection, detention of peak flows, and flood control in accordance with the Georgia Storm Water Management Manual. The storm water management facilities for the development have been designed to maintain or improve water quality conditions downstream of the development.
- c. **Minimization of negative impacts on existing infrastructure** – The proposed development will utilize public sanitary sewage disposal; as sanitary sewage treatment capacity is available to serve the subject property, the development will have no negative impact on public sanitary sewer utilities. The proposed development will not significantly impact public roads, water, or natural gas utilities.
- d. **Minimization on archeological/historically significant areas**– N/A; the subject property is not a historical site.

- e. **Minimization of negative impacts on environmentally stressed communities where environmentally stressed communities are defined as communities exposed to a minimum of two environmentally adverse conditions resulting from public and private municipal (e.g., solid waste and wastewater treatment facilities, utilities, airports, and railroads) and industrial (e.g., landfills, quarries and manufacturing facilities) uses – N/A**
- f. **Creation and preservation of green space and open space –** The developable area of this subject property is limited by building setbacks from adjoining properties. The proposed building setbacks and tree protection provisions of the Johns Creek Code of Ordinances will provide adequate screening and preservation of green space and open space to comply with the intent of the Comprehensive Plan.
- g. **Protection of citizens from the negative impacts of noise and lighting –** The proposed development will comply with all City of Johns Creek standards regarding lighting height, luminescence, and light spillage from the subject property.
- h. **Protection of parks and recreational green space - N/A;** the subject property contains no park or recreational green space. As a commercial development, use of the subject property will have no adverse impact on parks or recreational green space
- i. **Minimization of impacts to wildlife habitats –** The proposed development will have minimal impact on wildlife habitats as substantial green space will be preserved.

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